

APPENDIX A  
STANDARD CLAUSES  
STATE OF TEXAS, DIR CONTRACTS

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**STANDARD CLAUSES FOR TEXAS DIR CONTRACTS**

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

**1. INDEMNIFICATION CLAUSE.** Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Vendor. Vendor agrees to defend against any and all such claims at Vendor's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

**2. NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Vendor may not assign this Contract and/or any Supplemental Agreement without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

In the event a Customer is merged with another Customer the Services shall be transferred to the new Customer and all payments shall be made according to the Supplemental Agreement unless otherwise mutually agreed upon, only if the new Customer is appropriated by their governing body to do so.

**3. NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Vendor. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

**4. CONFIDENTIALITY CLAUSE.** Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Vendor agrees to comply with any additional confidentiality requirements as specified by the Customer in the Supplemental Agreement.

Under the terms of this Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

**5. VENDOR CERTIFICATIONS.**

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under this Contract.

**6. EQUAL OPPORTUNITY COMPLIANCE.**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Contract. If Vendor is found to be not in compliance with these requirements during the term of this Contract, Vendor agrees to

take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

**7. RECORDS.** The Vendor shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audits or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of service, service delivery date, full invoice address, unit price, extended price, invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Vendor shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, auditing, and/or copying Vendor's applicable records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor's personnel familiar with the Vendor's books and records shall be made available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of a compliance check or audit.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to the Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

**8. ABILITY TO CONDUCT BUSINESS IN TEXAS.** The Vendor is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Vendor is a "Qualified Information Systems Vendor" as defined in §2157.001, Texas Government Code. All services offered to Customers under this Contract are listed in Vendor's catalogue on file with the Texas Building and Procurement Commission.

**9. INVALID TERM OR CONDITION.** If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

**10. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.** Vendor and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

**11. ENTIRETIES.** The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract, except the West Texas Disaster Recovery Operating Center contract and supplemental agreements under that contract.

**12. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.** The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Vendor. Additional Customer terms and conditions, which do not conflict with the contract, may be stated within the Customer's Supplemental Agreement and given effect. For individual procurements, however, the Vendor may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Vendor shall furnish a copy of such better offerings to DIR upon request.

**13. DIR LOGO.** Vendor may use the DIR Go DIRect logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or

smaller than the Vendor logo; (iii) the DIR logo is only used to communicate the availability of services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

**14. VENDOR LOGO.** DIR may use the Vendor's name and logo in the promotion of this Contract to communicate the availability of Services under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Vendor's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**15. TRADE SHOW PARTICIPATION.** Vendor understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Vendor's expense. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Vendor's booth.

**16. ORIENTATION MEETING.** Upon 60 days from execution of the Contract, DIR may require the Vendor to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost in the time and travel of the Vendor for attendance at the meeting.

**17. USE OF SUBCONTRACTORS.** Vendor may subcontract services under this Contract. However, Vendor shall remain solely responsible for the performance of its obligations under this Contract. All Customer payments for services shall be made directly to the Vendor. The Vendor shall be responsible for all payments to subcontractors. If Vendor uses any subcontractors other than those specified in Vendor's bid response to DIR-TMP-03-014, Vendor shall obtain advance written authorization from the State Contract Administrator. Vendor shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan associated with this Contract.

**18. FORCE MAJEURE.** DIR, Customer, or Vendor may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**19. TERMINATION FOR NON-APPROPRIATION.** Customer and/or DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. Customer may terminate their Supplemental Agreement without incurring liability, except to pay for Services already rendered by Vendor or for Services that in Customer's notice of termination are specifically excluded from termination. In the event of non-appropriation, Vendor will be provided ten (10) days written notice of intent to terminate.

**20. TERMINATION FOR CONVENIENCE.** DIR may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. Customer shall not have the right to termination for convenience under their Supplemental Agreements.

**21. TERMINATION FOR CAUSE.** Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on the termination for cause term supplied by the Vendor in their Supplemental Agreement.

**22. CUSTOMER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued or Supplemental Agreement entered into with respect to all services ordered and accepted prior to the effective termination date, but no new Supplemental Agreements may be entered into by the Vendor and any Customer.

**23. VENDOR RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for services ordered prior to the effective termination date and ultimately accepted.

**24. SURVIVAL.** All Supplemental Agreements that are entered into between Vendor and a Customer under the terms and conditions of this Contract shall survive the termination or expiration of this Contract. Any provisions of this Contract shall survive termination or expiration for the benefit of any Supplemental Agreement entered hereunder.

**25. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 475-4700, voice  
(512) 475-4759, fax